

STATE OF MICHIGAN
COURT OF APPEALS

ERIC CLYDE BALL,

Plaintiff-Appellant,

v

JOSEPH J. JERKINS,

Defendant-Appellee.

UNPUBLISHED

September 23, 2010

No. 292591

Kalamazoo Circuit Court

LC No. 09-000196-NM

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

MEMORANDUM.

Plaintiff, a prisoner serving a life sentence with the Department of Corrections, appeals as of right the trial court's order granting summary disposition to defendant, the attorney who defended plaintiff at the trial that, in 1996, resulted in plaintiff's life sentence. We affirm.

Plaintiff filed suit 13 years after defendant's representation of him ended, demanding a refund of fees because of nonperformance. Among plaintiff's complaints were that defendant failed to object to, or otherwise expose, certain alleged procedural irregularities in the Calhoun Circuit Court. Defendant moved for summary disposition on the ground that the legal malpractice claim was barred by the applicable statute of limitations. The court noted that plaintiff provided no reason for delay in bringing the claim and granted the motion.

Whether a claim is barred by a statute of limitations is a question of law reviewed de novo. *McKiney v Clayman*, 237 Mich App 198, 201; 602 NW2d 612 (1999).

MCL 600.5805(6) provides generally that an action alleging malpractice must be commenced within two years after the claim has accrued. MCL 600.5838(1) establishes that a malpractice claim against a lawyer "accrues at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose." See also *Gebhardt v O'Rourke*, 444 Mich 535, 543; 510 NW2d 900 (1994). Subsection (2) in turn provides that a malpractice claim "may be commenced . . . within 6 months after the plaintiff discovers or should have discovered the existence of the claim"

Plaintiff observes that MCR 8.122, which governs claims by clients against attorneys, includes no period of limitations and suggests that MCL 600.5805(6) is inapplicable on the grounds that it is overridden by the court rule, which transforms the case into an administrative one, or because defendant's complicity in alleged corruption has left him with indefinitely

continuing duties to plaintiff. But MCR 8.122 and MCL 600.5805(6) operate in tandem, such that the latter's period of limitations applies. See *Jennings v Southwood*, 446 Mich 125, 136-137; 521 NW2d 230 (1994) (stating that statutes of common purpose should be harmonized). Styling this malpractice claim as an administrative action is of no avail. See *Local 1064 v Ernst & Young*, 449 Mich 322, 327 n 10; 535 NW2d 187 (1995) (stating that "in ruling on a statute of limitations defense the court may look behind the technical label . . . to the substance of the claim asserted."). And plaintiff cites no authority for the proposition that the attorney-client relationship remains active indefinitely if the attorney has connived at some kind of corruption in the matter. See *Impullitti v Impullitti*, 163 Mich App 507, 512; 415 NW2d 261 (1987) ("A bald assertion without supporting authority precludes an examination of the issue."). Because the period of limitations on a claim for legal malpractice had long since expired and plaintiff does not contend that MCL 600.5838(2) applies, the trial court properly granted defendant's motion for summary disposition.

Plaintiff's expressed concern with the fortunes of a fellow inmate are likewise inapt, because one party may not claim another party's appellate opportunities. See *Branch Co Bd of Comm'rs v Serv Employees Int'l Union*, 168 Mich App 340, 346; 423 NW2d 658 (1988).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Jane M. Beckering